

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00015, to install a six (6) foot fence within the required front yard setback adjacent to both Cows Road and Sunderland Road, under Section 6.29 of the Zoning Bylaw, as applied for by W.D. Cows, Inc., at 134 Montague Road (A.K.A. 125 Sunderland Road) (Map 5A, Parcel 139, COM Zoning District) with the following conditions:

1. In accordance with the “Cows Building Supply: Proposed Fence Installation” map, dated December 16, 2010, and stamped approved on January 6, 2011, the following shall apply:
 - a. The fence shall not be located closer than 15 feet from the front property line along Sunderland Road;
 - b. The fence shall not be located closer than five (5) feet from the front property line (at the northwest edge) and nine (9) feet from the front property line (at the northeast edge) along Cows Road;
 - c. Neither section of fence shall exceed six (6) feet in height.
2. The location of the gate (at the northeast edge) shall be installed to meet the “clear sight triangle” requirements of Section 6/27 of the Zoning Bylaw.
3. The fence shall be black vinyl-clad chain link in accordance with the approved fence “details” stamped approved by the Zoning Board of Appeals on January 6, 2011.
4. The fence shall be maintained in good condition.
5. Any substantial change to the approved plans shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.

Hilda Greenbaum, Acting Chair
Amherst Zoning Board of Appeals

DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/owner: W.D. Cows, Inc., c/o Sarah la Cour
134 Montague Road, Amherst, MA 01002

Date application filed with the Town Clerk: December 17, 2010

Nature of request: To construct a six (6) foot fence within the required front yard setback, under Section 6.29 of the Zoning Bylaw

Address: 134 Montague Road (Map 5A-139, COM District)

Legal notice: Published on December 22, 2010 and December 29, 2010 in the Daily Hampshire Gazette and sent to abutters on December 21, 2010

Board members: Hilda Greenbaum, Eric Beal, Tom Ehrgood
Town Staff: Jeffrey Bagg, Senior Planner & Bonnie Weeks, Building Commissioner

Submissions:

- Project Application Report, dated December 23, 2010;
- ZBA application, filed with the Town Clerk on December 17, 2010;
- A "Project Narrative", dated December 16, 2010;
- A packet of materials regarding the proposed fence type;
- A "Site Context Map", dated December 16, 2010;
- A fence location map, dated December 16, 2010.

Site Visit: January 4, 2011

Hilda Greenbaum, Eric Beal and Tom Ehrgood, and the Senior Planner met with the applicant onsite. The following was observed:

- The approximate location of the proposed fence along Sunderland Road.
- The approximate location of the proposed fence along Cows Road and the existing lumber storage adjacent to the roadway – mostly at the western end of the roadway (closest to The Harp).

Public Hearing: January 6, 2011

Ms. Greenbaum clarified that the entire parcel is considered 134 Montague Road pursuant to Town records. However, she noted that the fence is being proposed on the portion of the property along the south side of Cows Road and along the east side of Sunderland Road. That portion of the property has an address of 125 Sunderland Road.

Sarah la Cour, Director of Conservation and Planning at W.D. Cows, Inc., was accompanied by Evan Jones, co-owner of W.D. Cows, Inc. Ms. La Cour presented the application. Her statements are summarized as follows:

- The purpose of the fence is to secure the W.D. Cows building supply retail store property and create a perimeter around the parcel.
- The property contains two (2) front yards pursuant to the Zoning Bylaw. The Commercial Zoning District requires a 20 foot front yard setback. Within that 20 foot setback, a fence cannot exceed four (4) feet in height without a Special Permit. A six (6) foot tall fence would otherwise be required to be located 20 feet from the front setback line.
- The fence along Sunderland Road is proposed to be installed 15 feet from the property line, where 20 feet is required. Along Cows Road, the fence is proposed to be installed five (5) feet from the property line (at the northwest edge) closest to Sunderland Road intersection and nine (9) feet from the property line (at the northeast edge). The fence is located nine (9) feet from the property line in that location to ensure that the gate will be setback from the road 25 feet to provide clear site lines.
- The fence will be black, vinyl-clad chain link as shown on the submitted "fence details".

Mr. Ehrgood noted that the Zoning Board of Appeals may authorize, under Section 6.29 of the Zoning Bylaw, a fence taller than four (4) feet in height *"for compelling reasons of safety, aesthetics, or site design."*

Ms. la Cour stated that the principal reason for the fence is to improve security. She noted that historically the Cows Road frontage contained piles of lumber which have acted as a barrier to deter people from entering the property. Since the lumberyard operation shut down, the supplies of lumber have been reduced and/or relocated leaving the entire northern property line open and unprotected. The fence will completely enclose the property with gates installed at various key locations.

Mr. Ehrgood asked if there have been any instances of burglary or trespass on the property. Mr. Jones stated that there have been several situations where the Police have been called due to people entering the property. He stated that this is typically more of a concern after hours. Ms. la Cour explained that the fence is also required along Sunderland Road in order to maintain a complete enclosure with gates installed for controlled entry.

Mr. Bagg clarified that the Special Permit shall only apply to those portions of the fence located within the required front yard setback along Cows Road and Sunderland Road. The other sections of fence are allowed to be six (6) feet with a building permit.

The following members of the public spoke regarding the application. All statements are summarized:

Mark Power, owner of The Harp at 163 Sunderland Road:

- He rents the property on which the Harp is located and expressed concern that the owner of the property was misled by the abutter's notice which stated that the fence was to be located on 134 Montague Road rather than 125 Sunderland Road.
- He expressed concern that the fence location would encroach on the area of the road used by his patrons, especially during the winter months. He noted that if, due to snow banks, cars hindered the safe travel of emergency vehicles, his patron parking could be jeopardized.
- He stated that he does not object to the fence, but noted that the location should not be closer than the existing lumber piles so as to reduce, or possibly eliminate, the parking area used by the patrons of his business.

Mr. Jones responded that a four (4) foot fence could be installed immediately adjacent to the property line with a building permit. In this case, the proposal is to install a six (6) foot fence located no closer than five (5) feet from the property line. Mr. Bagg noted that the property line and edge of pavement are not the same and that according to the submitted GIS map, the property line is approximately 10 feet from the edge of the roadway. Therefore, the fence would actually be approximately 15 feet from the edge of the roadway.

The Board members discussed the location of the fence along Cowls Road relative to the location where lumber had been piled on “bunks”. It was determined that the fence will not be closer than the edge of the bunks. However, it was also determined that the present location of the bunks is not a useful reference point because they will eventually be removed and/or relocated. Ms. la Cour noted that the fence will be located relative to the property line as shown on a survey.

Mr. Ehrgood asked whether a survey is needed to ensure that the fence will not further encroach on the informal off-street parking area. Ms. Weeks stated that a survey will be required for the issuance of a building permit. Ultimately, the Board determined that the most important aspect is to ensure that the fence will be located five (5) and nine (9) feet from the respective property line and that they did not require a survey in order to require those setbacks.

Patricia Holland, 105 Montague Road:

- She expressed concern about the negative aesthetic impact of such a long length of chain link fence and asked whether there were any alternative ~~in terms of the~~ types of fence.

Mr. Jones responded that the chain link fence was chosen because it is cost-effective and noted that a solid fence would actually make security less effective, as anyone on the property would not be able to be seen. He added that they chose the black vinyl-clad instead of the traditional silver chain link fence for aesthetic reasons.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Ehrgood seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

Pursuant to Section 6.29 of the Zoning Bylaw, the board found that the proposed eight (8) foot fence provides for the following “*compelling reasons of safety, aesthetics, or site design*”:

- Safety: Based on the applicant’s testimony there is a sufficient safety concern caused by the possibility for theft of materials stored on the site and/or a hazard from people illegally entering the property and injuring themselves. The potential safety issue caused by a reduction of parking area on the shoulder of the road is mitigated by the location of the fence approximately 15 feet from the edge of the paved roadway.
- Site design: It was noted that the fence will be located approximately in the middle of the existing storage bunks. However, the site design allows the location of the bunks to be removed and/or relocated. Therefore, the Board found that the location of the fence at five (5) feet and nine (9) feet from the respective property lines shown on the submitted map is sufficient to allow for continued parking on the shoulder of the road without causing further encroachment into the roadway.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 – *The proposal is suitably located in the neighborhood in which it is proposed, and; is compatible with existing uses and other uses permitted by right.* The proposal is located entirely within a Commercial Zoning District. Specifically, the location of the fence is within, and immediately adjacent to, the Commercial Zoning District. The fence is suitably located because a four (4) foot tall fence is allowed “by right” and could be installed immediately adjacent to the property line. In this case, the permit will allow the fence to be two (2) feet taller than allowed “by right” but will be located a minimum of five (5) feet from the property line. A chain link fence is consistent with the industrial type uses occurring on the property within the area which contains several non-owner occupied homes, a bar, and other commercial uses.

10.382 & 10.393 – *The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features, and; provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting.* The black vinyl-clad chain link fence is not a visually offensive structure. Any potential visual impact is mitigated by proposing a black vinyl clad chain link fence instead of a traditional silver chain link fence.

10.383 & 10.387 – *The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, and; provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements.* The proposal allows for adequate visibility for vehicular traffic versus a standard stockade fence or other solid fence. The location of the fence setback five (5) feet from the property line-- and even further from the edge of pavement--will allow for safe and adequate vehicular parking adjacent to the paved portions of Cowls Road. Additionally, the fence along the northeast edge will be located to meet the “clear site triangle” requirements of Section 6.27 of the Zoning Bylaw.

10.398 – *The proposal is in harmony with the general purpose and intent of the Bylaw and the Master Plan.* The Board found that the proposal benefits the general public by enhancing the safety of the established business from the possibility of theft and vandalism. Additionally, the proposed fence will help protect the general public from hazards that may exist on the commercial property. The proposal will not encroach upon the informal parking area adjacent to Cowls Road.

Public Meeting – Zoning Board Decision

Mr. Beal moved to APPROVE the application with conditions. Mr. Ehrgood seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE the request for Special Permit, ZBA FY2011-00015, to install a six (6) foot fence within the required front yard setback adjacent to both Cowls Road and Sunderland Road, under Section 6.29 of the Zoning Bylaw, as applied for by W.D. Cowls, Inc., at 134 Montague Road (A.K.A. 125 Sunderland Road) (Map 5A, Parcel 139, COM Zoning District), with conditions.

HILDA GREENBAUM

ERIC BEAL

TOM EHRCOOD

FILED THIS _____ day of _____, 2011 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2011.
NOTICE OF DECISION mailed this _____ day of _____, 2011
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2011,
in the Hampshire County Registry of Deeds.